

**Brookline Board of Appeals  
March 12, 2015, 7:00 PM  
Public Hearing**

**333 Washington Street  
Selectmen's Hearing Room, 6<sup>th</sup> Floor**

*Board Members Present: Jesse Geller (Chairman), Christopher Hussey, Mark Zuroff*

*Staff Present: Michael Yanovitch (Building Department), Jay Rosa (Planning Department)*

**11 Kensington Circle**

**Proposal:** Construct two rear additions totaling 405 square feet

**Zoning District:** S-10 (Single-Family)

**Precinct:** 15

**Board Decision:** Relief request **granted**, subject to conditions

**326 Harvard Street**

**Proposal:** Expand restaurant seating from 20 to 47 (Pure Cold Press Juice and Salad Bar)

**Zoning District:** G-1.75 (CC) (General Business)

**Precinct:** 9

**Board Decision:** Relief request **granted**, subject to conditions

**43 Glen Road**

**Proposal:** Demolish garage and replace with a one-and-a-half story addition, and construct a one-story addition at the rear

**Zoning District:** S-7 (Single-Family)

**Precinct:** 5

**Board Decision:** Relief request **granted**, subject to conditions

*Minutes shall be posted on the Town of Brookline website (<http://www.brooklinema.gov/564/Zoning-Board-of-Appeals>) upon approval. Draft minutes shall be made available upon request.*

*Decisions shall be posted on the Town of Brookline website ([www.brooklinema.gov](http://www.brooklinema.gov)). Appeals, if any, shall be filed with land court or superior court within twenty days after the date of filing of such notice in the office of the town clerk.*

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*Board Members Present: Jesse Geller (Chairman), Christopher Hussey, Mark Zuroff*

*Staff Present: Michael Yanovitch (Building Department), Jay Rosa (Planning Department)*

**7:00 PM**

**11 Kensington Street** – Construct two rear additions totaling 405 Square feet

Board Chairman Jesse Geller opened the hearing and called case# 2014-0086

Mr. Geller reviewed standard hearing procedure.

Property owner Joshua Vitullo (11 Kensington Circle) waived the reading of hearing notice for the record.

Mr. Vitullo stated that he is proposing to construct a small first-floor addition that will expand the existing kitchen. This addition is minimal, approximately 8' by 4', and effectively encloses an existing rear porch. A 370 square foot addition is also proposed for the second-story above an existing sun porch. This additional floor area will be used for a master bedroom and bathroom. In total the project requires FAR relief for 167 square feet and alters a pre-existing non-conformity (side-yard setback).

Mr. Vitullo confirmed that three abutter support letters had been submitted, and abutting property owners were made aware of project details.

Board Member Mark Zuroff requested additional detail regarding any counterbalancing amenities proposed by the applicant.

Board Chairman Jesse Geller stated that the proposal had not been cited for setback relief and therefore does not require counterbalancing amenities. Board Members concurred.

Mr. Vitullo stated that he does intend to install landscaping features near the rear lot line and install additional trees on the property. Additionally, the most impacted abutter at 47 Arlington Road is not opposed to these additions.

Board Member Christopher Hussey questioned if the first floor sunroom is seasonal and included in gross floor area number. Mr. Vitullo confirmed that the gross square footage does include the sunroom and the room is utilized during all seasons.

Mr. Geller requested that the applicant identify the dimensions of the second-story addition on floor plans submitted to the Board.

Mr. Hussey noted that an additional column included on the first floor is most likely for aesthetic purposes rather than load bearing. Overall, Mr. Hussey felt that the additions improve the aesthetic quality of the structure.

Mr. Geller called for any public comment in favor of, or in opposition to, the applicant's proposal. No members of the public wished to comment.

Mr. Geller requested that Jay Rosa present the opinions of the Planning Board. Mr. Rosa stated that the Planning Board unanimously supported the project. Requested FAR relief is minimal and side-yard setback non-compliance is pre-existing. The first-floor addition is not visible from surrounding properties and design elements have been incorporated to reduce the overall impact of the second-story addition on abutters.

Therefore, the Planning Board recommended approval of plans submitted by Oak Hill Architects, dated 5/28/2013, and the site plan submitted by Everett M. Brooks Co., dated 10/16/2014, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, existing and proposed floor plans, and elevations, subject to the review and approval of the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director for Regulatory Planning.
3. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) final floor plans and elevations, stamped and signed by a registered architect; 2) a final site plan, stamped and signed by a registered engineer or land surveyor; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Geller requested that Michael Yanovitch present the opinion of the Building Department. Mr. Yanovitch stated that the Building Department had no objection to the proposal. Special permit FAR relief is included in the Bylaw specifically for projects such as this. If the ZBA does grant necessary special permit relief, the Building Department will work with the petitioner to ensure compliance with building codes.

Board Members agreed that stated Condition #2 should be removed.

Mr. Hussey stated support for the project and felt that the conditions for special permit relief had been met. Mr. Zuroff concurred.

Mr. Geller agreed that the application meets the requirements of Bylaw Section 5.22.3.b.1.b and 9.05, as well as design review requirements for 5.09.1.j. Mr. Geller reiterated the Building Department comment that this project is a prime example of why FAR relief is included in the Bylaw.

**Unanimous grant of requested relief, subject to the following revised conditions:**

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, existing and proposed floor plans, and elevations, subject to the review and approval of the Assistant Director for Regulatory Planning.
2. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) final floor plans and elevations, stamped and signed by a registered architect; 2) a final site plan, stamped and signed by a registered engineer or land surveyor; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

**326 Harvard Street (Pure Cold Press)** – Expand restaurant seating from 20 to 47

Board Chairman Jesse Geller called case #2015-0005. The applicant was not present so the Board agreed to continue the case to 8:00pm.

**43 Glen Road** – Demolish garage and replace with a one-and-a-half-story addition, and construct a single-story addition at the rear

Board Chairman Jesse Geller called case#2014-0081 and reviewed standard hearing procedure.

The applicant's attorney Robert Allen (300 Washington Street – Brookline, MA) waived the reading of hearing notice for the record and introduced property owners Tony Curkras and Sara Tolaney, and project architect Lynn Osborn.

Mr. Allen stated that the 43 Glen Road property was built in 1942 within the Pill Hill local historic district. The current owners purchased the home in 2005 and work in the neighboring Longwood Medical Area. This application for special permit relief represents the second proposal to expand the living area at this property. In 2013, the applicants proposed a two-story rear addition that was approved by the Preservation Commission and Planning Board but subsequently withdrawn without prejudice before the ZBA. One dissenting ZBA member was concerned about the massing and height of the addition.

The current proposal before the Board includes a single-story rear addition and a one-and-a-half story side addition. A proposed covered porch at the southern end of the structure is permitted as-of-right. The applicant is also proposing landscaping features and fence repairs as counterbalancing amenities for the requested relief.

Mr. Allen stated that these additions require special permit relief for Floor Area Ratio (§5.22.3.b.1.b), Design Review (§5.09.2.j), and Rear yard setback (§5.43, §5.70). This modified plan resulted, in part, from abutter feedback regarding the prior proposal.

The proposal before the Board was again unanimously approved by the Preservation Commission and supported by the Planning Board with a vote of 4-1.

Architect, Lynn Osborn presented additional details of the proposed additions. Ms. Osborn provided models illustrating both the 2013 and current proposals. These additions are small-scale in Ms. Osborn's opinion. The garage will be removed and the side addition will be built on roughly the same footprint. A rear sunroom that is in poor condition will be removed and the single-story addition will extend along the majority of the rear of the structure. These additions will be exclusively used for living space and dormers have been incorporated in the design in order to minimize height increases as much as possible. Ms. Osborn concluded by stating that the garage is not currently included in floor area calculations so the overall increase in floor area associated with the proposal may be misleading because a portion of this increase follows the existing garage footprint.

Board Chairman Jesse Geller requested confirmation for the record that the primary changes from the 2013 proposal include a reduced rear addition and increased living space at the side where the garage is currently located. Ms. Osborn concurred.

Board Member Christopher Hussey requested further detail regarding the covered porch. Ms. Osborn stated that it is permitted by-right and was approved by the Preservation Commission.

Mr. Allen stated that the as-built structure will still remain as one of the smallest homes in the neighborhood and represents a compromise between the property owners' need and abutting resident concerns. Requested FAR and setback relief is minimal, and the project has met the extremely high standards established by the Preservation Commission.

Mr. Allen reviewed project compliance with all relevant special permit conditions for approval as outlined in Bylaw Section 9.05. Mr. Allen also referenced Bylaw Section 5.22.1.e as it was discussed at the Planning Board. This provision prohibits the displacement of interior stored equipment/vehicles to an exterior location as a result of interior conversion that requires FAR relief. Mr. Allen argued that the current garage size is not adequate to store vehicles, new basement storage space can accommodate displaced equipment, and these proposed additions have been designed to minimize adverse impact on abutters.

Mr. Hussey noted that the project had been cited for design review under Section 5.09.2.j, but an itemized list of relevant design review elements had not been provided by the Planning Board. Mr. Hussey requested that the applicant describe relevant impacts in further detail. Mr. Allen reiterated the fact that the Planning Board majority recommended approval and Preservation Commission design standards (materials, grading, landscaping, character) had been met.

Mr. Geller called for public comment in favor of the applicant's proposal and requested that comments focus primarily on application of the zoning Bylaw rather than provisions governed by separate ordinances related to preservation.

Thomas Kennedy (46 Glen Road) stated that he lives directly across the street and sees the applicant's home every day. The project has been redesigned as a compromise and the applicant's proposal is modest. Mr. Kennedy believed that the as-built project will enhance the home itself and the wider neighborhood.

Jennifer Bellen (65 Glen Road) expressed support for the proposal and felt that overall impact is trivial. Ms. Bellen believed this project to be a neighborhood enhancement.

Gloria Gammons (36 Glen Road) expressed support and felt the neighborhood will be undamaged and the lives of long term residents will be improved.

Johanna Kennedy (46 Glen Road) supported the proposal and stated that the Pill Hill neighborhood is attractive due to both architecture and residents.

Mr. Geller called for public comment in opposition of the applicant's proposal.

John Griffin (Greenberg and Traurig, Boston, MA) representing Dennis and Susan Schiro, stated that the special permit application and public notice did not accurately describe the proposed alterations to the 43 Glen Road property. Mr. Griffin also stated that the applicant is attempting to increase the non-conformity of a non-conforming structure that is located on a non-conforming lot. Mr. Griffin did not believe that MGL. c40A provides any language that allows for special permit relief for all local dimensional requirements. Mr. Griffin also wished to state for the record that abutting residents never made suggestions regarding how specifically to improve project plans from the 2013 proposal. For these reasons, Mr. Griffin suggested that the Board decline the approval of this application.

Sam Abbott (15 Cumberland Avenue) submitted a written statement to the Board. Mr. Abbott stated that the proposal does not meet the conditions for special permit relief under 9.05 because there will be direct adverse impact on the neighborhood. Additionally the garage conversion violates Section 5.22.1.e because vehicles will be displaced to an exterior location. Mr. Abbott stated that previous home owners certainly parked vehicles within the garage at 43 Glen Road and the applicant successfully applied for updated garage door modifications in 2005, indicating vehicular use. Rear-yard setback non-compliance results in a loss of amenity for surrounding residents and common FAR non-compliance in the neighborhood is indicative of the fact that open space is at a premium in the area. Mr. Abbott felt that previous arguments that the property owner should be permitted to expand the home in a manner that is equitable to surrounding FAR is also false because all area homes were constructed prior to FAR related zoning regulations. Mr. Abbott suggested that a basement conversion and/or dormers, which are encouraged over exterior additions in the Zoning Bylaw, are more appropriate solutions to expand floor area at 43 Glen Road.

Susan Schiro (40 Hawthorne Road) emphasized that the additional 3 foot encroachment into the rear-yard setback is further enhanced because this addition extends almost the entire length of the rear of the home. The proposed addition and covered porch at both sides of the home will create the perception of a wall. Ms. Schiro supported Mr. Abbott's comments and believed that comparative FAR measurements are inaccurate because her home has finished basement space that is taxed and included in the FAR accordingly. Lastly Ms. Schiro did not feel that the proposed landscape plan is adequate for the property.

Peter Manus (40 Hawthorne Road) described the Glen Road area as a "micro-neighborhood" in which multiple houses share open space, particularly rear and side open space. This project will result in a reduction of sight lines and abutter amenity in Mr. Manus' opinion. Mr. Manus disagreed that this is a modest addition because the massing of the home will "push out" rather than convert interior space. Mr. Manus stated that zoning regulations are a balance between private and public interest and should provide protection for how abutting properties will be treated.

Catherine Zimmerman (37 Glen Road) stated that she is the immediate abutter facing the current garage at 43 Glen Road. Ms. Zimmerman expressed concern that her property will be negatively impacted by the reduction of privacy and the experience currently generated by her property. Ms.

Zimmerman stated that 43 Glen Road living space will now be approximately 16 feet closer to her property and vehicles will now be parked approximately 5 feet from her property line. These factors further increase density in the area.

Cornelia McMurtrie (35 Hawthorne Road) stated opposition due to the long-term impact of this proposal. Previous comments have focused on the benefit provided to 43 Glen Road property owners but have not considered the detriment to abutters. Ms. McMurtrie stated support for Sam Abbott's comments and confirmed that prior property owners did utilize the garage to park vehicles.

Ms. McMurtire reiterated opposition to the proposal, specifically as a member of the Pill Hill Local Historic District. All residents have had to adhere to these local historic standards so it is concerning that the proposal has even made it this far in the special permit and design review process.

Deborah Cureton (Glen Road) provided 33 signatures in opposition to the proposed additions. Ms. Cureton specifically opposed the partial demolition of this historic property. Ms. Cureton is a professional landscape architect and produced elevations/parking plans to provide a more accurate depiction of massing and abutter impact. In Ms. Cureton's opinion, the proposed 16'x17' parking area is not adequate for two vehicles parked side by side. A 16'x21' parking area is required and will create significantly more impact on abutters. This project will also forever displace vehicles from the existing garage.

Mr. Geller requested that Jay Rosa deliver the opinion of the Planning Board. Mr. Rosa stated that The Planning Board supported this proposal by a majority vote of 4-1. Board members felt that the massing of the additions is consistent with surrounding structures and agreed with preservation commission findings that the historic character of the structure will be maintained. The Board did consider provisions included in Bylaw Section 5.22.1.e regarding the displacement of vehicles stored within a garage, but ultimately determined that this regulation is not applicable because the applicant does not use the existing garage to store vehicles. Lastly, the Board recognized proposed landscape features as being appropriate counterbalancing amenities for the requested dimensional relief.

Therefore, the Planning Board (4-1) recommended approval of the plans submitted by Osborn Studio +, dated 1/21/15, and the site plan by Boston Survey, Inc., dated 1/21/15. Should the Zoning Board of Appeals find that the conditions for special permit relief have been met, the Planning Board recommended the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, elevations, and floor plans subject to the review and approval of the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a Building Permit the applicant shall receive a Certificate of Appropriateness from the Brookline Preservation Commission indicating support for all proposed exterior modifications.
3. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director for Regulatory Planning.

4. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and elevations stamped and signed by a registered architect; 3) a Certificate of Appropriateness issued by the Brookline Preservation Commission, and 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Geller requested that Michael Yanovitch deliver the opinion of the Building Department. Mr. Yanovitch stated that the Building Department has no opposition to this proposal. Bylaw regulations concerning FAR exceptions have been challenged in the past but Mr. Yanovitch disagreed that MGL c40A prohibits the expansion of structures through special permit relief, specifically mentioning language similar to increases in permissible density.

Mr. Yanovitch stated that the parking debate in Brookline is always a difficult subject. Strict enforcement would most likely result in illegal front-yard parking throughout various neighborhoods in Brookline, and Pill Hill is not unique in this instance. Should the Board find that the necessary requirements for special permit relief are met the Building Department intends to work with the applicant to ensure compliance with building codes.

### **Board Deliberation**

Board member, Mark Zuroff stated that he appreciated that the neighborhood is united and respectful of historic quality, but distressed that this argument is used in an attempt to block this proposal that has already complied with all required preservation related guidelines. The Zoning Bylaw allows for this type of FAR expansion and therefore is within the parameters of the Board's authority to grant. Mr. Zuroff believed that, if approved, the project will not be detrimental to the wider neighborhood and that the conditions for special permit relief under 9.05 have been met, but concern about vehicle displacement under 5.22.1.e still remains.

Mr. Hussey stated that he heard and supported the previous 2013 proposal. Current modifications before the Board represent an improvement and reduced impact from that proposal. Mr. Hussey believed that proposed additions are appropriate and adequate in terms of interior modernization. For these reasons Mr. Hussey believed the project is worthy of necessary zoning relief.

Mr. Geller stated that he supported the previous 2013 proposal as it met the standards for special permit relief under 9.05. Mr. Geller believed that this proposal again meets those standards, as well as historic preservation standards, but does not comply with 5.22.1.e due to the displacement of vehicles stored internally. This regulation is not a subjective standard even if the project meets all other standards for special permit relief. Mr. Zuroff did not disagree with this opinion.

Mr. Allen in rebuttal refuted this opinion. Mr. Allen argued that Preservation Commission approval allows for the demolition of the existing garage, the establishment of a compliant surface parking area, and the construction of a new one-and-a-half story addition.

Mr. Allen stated that an interior conversion is specifically defined by the Bylaw and is treated differently under the Bylaw than an exterior addition. He noted that an interior conversion requiring FAR relief is not permitted to displace interior storage to an exterior location but the proposal before the Board is in fact a demolition followed by an exterior addition. Since it is not an interior conversion, 5.22.1.e does not apply in Mr. Allen's opinion. On inquiry from the Board, Mr. Yanovitch confirmed for the Board that this application was for an exterior addition rather than an



interior modification and that the application before and which was approved by the Preservation Commission was for demolition of the existing garage and construction of a new addition.

Board members concurred with Mr. Allen's analysis.

Mr. Geller again reviewed project compliance with the standards for special permit relief as outlined in Bylaw Section 9.05, and identified proposed landscape and fence improvements as appropriate counterbalancing amenities for dimensional relief (§5.43).

Mr. Hussey suggested the removal of condition #2 as stated for the record because it is included within condition #4 as well.

**Unanimous Board approval of relief as requested, subject to the following revised conditions:**

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, elevations, and floor plans subject to the review and approval of the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director for Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and elevations stamped and signed by a registered architect; 3) a Certificate of Appropriateness issued by the Brookline Preservation Commission, and 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

**326 Harvard Street (Pure Cold Press) – Expand restaurant seating from 20 to 47**

Board Chairman Jesse Geller re-called case #2015-0005 and reviewed standard hearing procedure.

Applicant Haim Cohen (196 Allston Street – Boston, MA) waived the reading of public hearing notice for the record. Mr. Cohen stated that he is requesting to expand restaurant seating at Pure Cold Press Juice and Salad Bar. Mr. Cohen's family has operated Rami's (located adjacent to 326 Harvard Street) for 25 years. The retail/restaurant location next door became available and Mr. Cohen wished to expand to complement the success of Rami's. Current seating does not maximize the floor area and layout, necessitating the need for additional seats. Mr. Cohen stated that the Coolidge Corner location is transit rich, pedestrian friendly, and in close proximity to adequate off-street parking.

Mr. Geller called for public comment in favor of, or in opposition to the applicant's proposal. No members of the public wished to comment.

Mr. Geller requested that Jay Rosa deliver the opinion of the Planning Board. Mr. Rosa stated that the Planning Board unanimously supported this proposal to expand restaurant seating at 326 Harvard Street. The property is located in Coolidge Corner which provides a variety of public

transit and parking options. Also, the applicant has initiated interior renovations and continues to work with the Planning Board on signage and façade improvements. Overall, the Planning Board felt that the as-built project will be an asset within this primary commercial area.

**Therefore, the Planning Board recommends approval of the special permit application to increase restaurant seating for up to 47 seats at 326 Harvard Street, and the floor plans submitted by Schopf Design Associates, dated 6/19/14, subject to the following conditions:**

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans stamped and signed by a registered architect, subject to the review and approval of the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a Building Permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) final floor plans stamped and signed by a registered architect; 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Geller requested that Michael Yanovitch deliver the opinion of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to this proposal. Parking relief is available for a project of this nature within general business districts. The location has adequate space for the additional requested seating, and the Building Department intends to work with the applicant to ensure compliance with Building Permits if necessary relief is granted.

### **Board Deliberation**

Mr. Geller noted that the Zoning Bylaw Review Committee adopted regulations that allow for the partial waiver of off-street parking requirements exactly for projects such as this. Mr. Geller believed that the standards for special permit relief had been met under Bylaw Sections 9.05 and 6.02.1.b.

Board members Hussey and Zuroff concurred.

**Unanimous Board approval of relief as requested, subject to the following conditions:**

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans stamped and signed by a registered architect, subject to the review and approval of the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a Building Permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) final floor plans stamped and signed by a registered architect; 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

**Unanimous Board approval of New England Treatment Access proposed ZBA hearing date extension agreement as submitted by Amanda Rositano. Hearing scheduled for April 23, 2015 at 7:00pm.**

**Hearing closed**